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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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07/18/2005

Peter Rohrig

CU-4300 BWH

7044

26530 7590 09/17/2009  
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EXAMINER

HICKS, ROBERT J

ART UNIT

PAPER NUMBER

3781

MAIL DATE

DELIVERY MODE

09/17/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/542,540	<b>Applicant(s)</b> ROHRIG, PETER	
	<b>Examiner</b> ROBERT J. HICKS	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/9/2009 (2)</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Because of the applicant's amendments, the original objections to the abstract and drawings, in the office action filed March 30, 2009, are hereby withdrawn.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on September 9, 2009 was filed after the mailing date of the non-final office action on March 30, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. A duplicate copy of the IDS filed September 9, 2009 was also submitted. The duplicate copy has been placed in the application file, but the information referred to therein has not been considered as to the merits.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

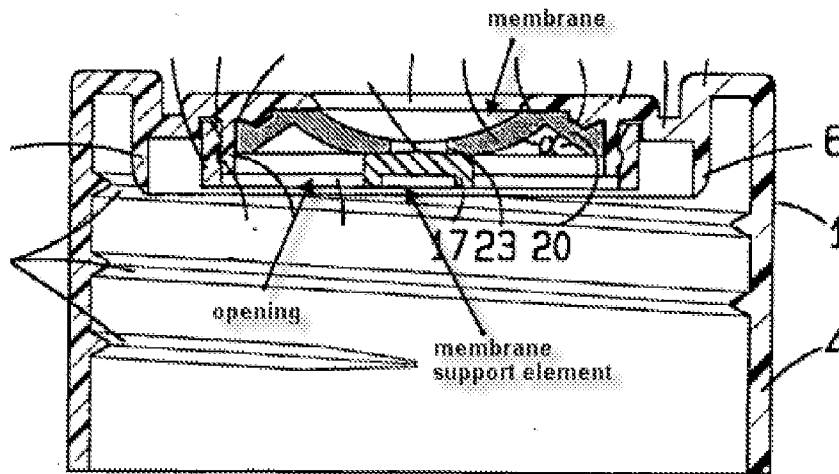
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. **Claims 1-5, 10, 11, 13-22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suffa et al. (WIPO 95/26306) [Suffa] in view of Esposito, Jr. (3,232,499) [Esposito].**
6. Regarding Claim 1, the publication to Suffa – a closure for a container – discloses a valve assembly (Fig. 1) for a substantially elastic mouthpiece of a liquid container (Pg. 1 Lines 23-25), which includes a flexible membrane (2) having at least one valve opening (center of 2, Fig. 1) and a substantially rigid membrane supporting element (17) having at least one valve opening (through 18, Fig. 2), wherein, with the valve assembly being in a closed position, the membrane rests on the membrane supporting element and the valve opening of the membrane is sealingly covered by the membrane supporting element and the valve opening of the membrane supporting element is sealingly covered by the membrane (Fig. 1), the membrane being inwardly curved in said closed position, wherein during the external application of pressure to the drinking mouthpiece and/or the application of an under pressure at the membrane side facing away from the membrane supporting element (Page 2 Line 65 – Page 3 Line 3), the membrane is in a resnapped, open position in which the valve openings of the membrane and membrane supporting element, respectively, are released (Fig. 4). The openings of the membrane and membrane support are open when fluid is being dispensed.



Suffa does not expressly disclose that the valve assembly is for a drinking mouthpiece, or that the membrane is in a resnapped, outwardly curved open position. However, the patent to Esposito – a closure and container combination with valve means – discloses a valve assembly (**Esposito**, 15) with a drinking mouthpiece (**Esposito**, 16) for a liquid container (**Esposito**, Col. 3 Lines 2-6), in which the flexible membrane (**Esposito**, 15a-b) is in a resnapped, outwardly curved open position when dispensing liquid (**Esposito**, Fig. 5, Col. 2 Lines 27-33). A drinking fluid can be a food product. In addition, the membrane is curved outwardly when the container dispensed liquid. It would have been obvious at the time of the invention to one of ordinary skill, with all the claimed features known in the prior art and with one of ordinary skill with the knowledge to combine these elements by known methods without effecting the utility of the prior art, to have the container mentioned in the Suffa closure to be filled with a drinking fluid for the mouthpiece, as suggested by Esposito, which allows for product to

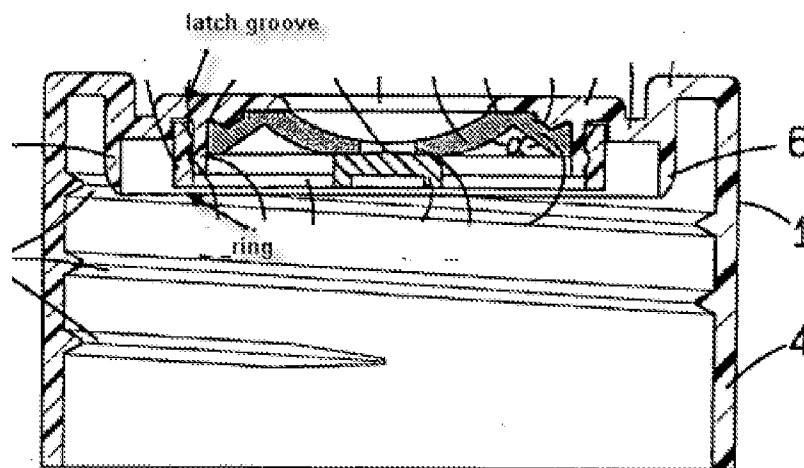
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flow through the dispensing aperture with a flexible membrane (**Esposito**, Col. 1 Lines 19-24).

7. Regarding Claim 2, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Suffa teaches the membrane is conical in its closed and open positions (**Suffa**, Figs. 1 and 4).

8. Regarding Claim 3, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Suffa teaches the membrane support element (**Suffa**, 17) comprises a valve seat surface (**Suffa**, 16) corresponding with the inwardly curved shape of the membrane in the closed position (**Suffa**, Fig. 1).

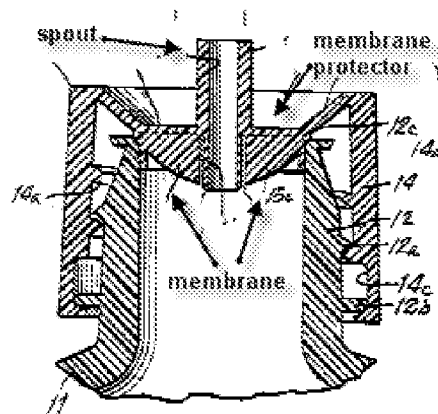
9. Regarding Claim 4, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Suffa teaches a latch groove intended to receive the membrane supporting element configured as a latch body (**Suffa**, Fig. 1).



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10. Regarding Claim 5, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Suffa teaches the membrane supporting element is connected with a fastening ring (**Suffa**, 7) via a web (**Suffa**, 18, Fig. 1).

11. Regarding Claim 10, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Esposito discloses the mouthpiece formed as a drinking spout (**Esposito**, 16) extends beyond the membrane, whereby an elevated drinking spout edge is formed as a membrane protection and spacer element (**Esposito**, Fig. 4).



12. Regarding Claim 11, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, Esposito discloses the drinking mouthpiece is made of an elastomer material (**Esposito**, 16, Fig. 4, Col. 2 Lines 13-21).

13. Regarding Claim 25, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 11 above; further, Esposito discloses the drinking mouthpiece is made of a TPE (**Esposito**, 16, Col. 2 Lines 13-21).

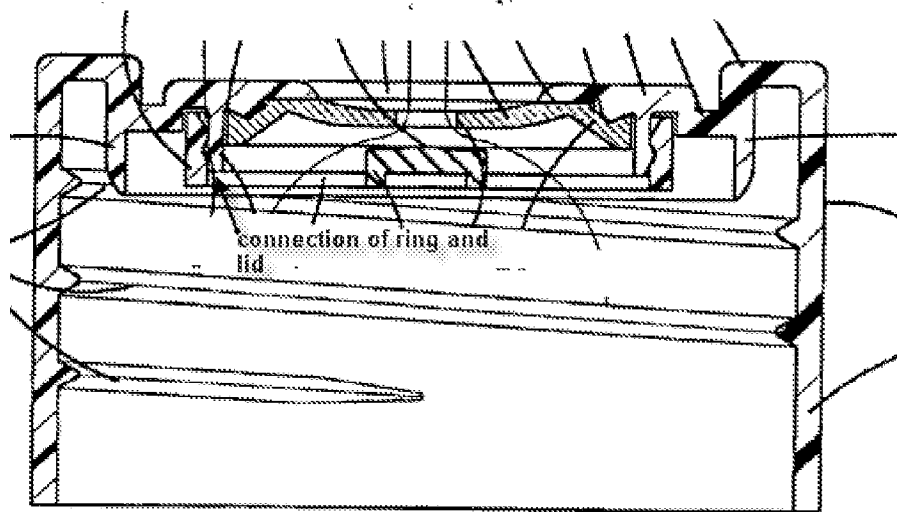
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14. Regarding Claim 13, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above; further, the combination discloses a drinking mouthpiece for a liquid container according to claim 1, and Suffa discloses the valve assembly arranged on a lid (**Suffa**, 1) including an opening for the passage of liquid (**Suffa**, 19).

15. Regarding Claim 14, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 13 above; further Esposito teaches the mouthpiece (**Esposito**, 16) is produced by injection molding (**Esposito**, Col. 1 Lines 14-21, and Col. 2 Lines 13-21). Injection molding is a modern molding method.

16. Regarding Claim 15, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 13 above; further Suffa teaches the lid has an air valve (Suffa, 15) having an annular membrane (Suffa, 10) with at least one air passage opening (**Suffa**, allowing passage by arrows 24) wherein a reception element (**Suffa**, 13 and 14) comprises at least one air entry opening communicating with the air passage opening of the lid and leading into the groove (**Suffa**, Fig. 5) wherein a ring (**Suffa**, 2) is insertable into the groove and the air entry opening is sealed at equal pressures on either side of the air entry (**Suffa**, Fig. 4, Page 2 Lines 59-64) and at an overpressure at the inner side of the lid, and the air entry opening is released at an underpressure at the inner side of the lid (**Suffa**, Fig. 5, Page 2 Line 65 to Page 3 Line 3).





17. Regarding Claim 16, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the end region of the ring facing the air entry opening of the reception element is designed to be conical in cross-section (**Suffa**, Fig. 4).

18. Regarding Claim 17, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the end region of the ring facing the air entry opening of the reception element has at least one recess (**Suffa**, to fit 11, Fig. 4).

19. Regarding Claim 18, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the ring is fixed in the reception element by the aid of a snap connection (**Suffa**, Pg. 2 Lines 21-24).

20. Regarding Claim 19, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 18 above; further Suffa discloses the ring

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comprises on its outer side a circumferential bead for snapping into the groove of the reception element (**Suffa**, Fig. 4, Page 2 Lines 21-24).

21. Regarding Claim 20, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the inner groove wall is an annular membrane (**Suffa**, Fig. 4).

22. Regarding Claim 21, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the annular membrane comprises at least one thin spot to fix the bias of the annular membrane (**Suffa**, Fig. 4).

23. Regarding Claim 22, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 15 above; further Suffa discloses the fastening ring (**Suffa**, 7) in the direction of the lid opening is connected with the ring via an inwardly extending connection flange (**Suffa**, 18).

**24. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suffa in view of Esposito as applied to claim 5 above, and further in view of Meins (4,415,097).**

25. Regarding Claim 6, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 5 above. The Suffa and Esposito combination does not expressly disclose that the mouthpiece is oval in top view; however, the patent to Meins – a drinking container with spout – discloses a mouthpiece for a lid that is oval in top view (**Meins**, 65, Fig. 8, Col. 3 Lines 51-57). The nipple or mouthpiece is oval in shape. It would have been obvious at the time of the invention to

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one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the mouthpiece in the Suffa and Esposito combination valve assembly to be oval in shape from the top view, as suggested by Meins, in order to flatten the mouthpiece for better storage (**Meins**, Col. 3 Lines 51-57).

26. Regarding Claim 7, Suffa in view of Esposito in view of Meins discloses all the limitations substantially as claimed, as applied to claim 6 above; further, Suffa teaches the web (**Suffa**, 18) used to fasten the membrane support element is a plate with the plain defined by the web in the direction of the longer axis of the drinking mouthpiece top view (**Suffa**, Fig. 2). A circle is a special type of ellipsis or oval.

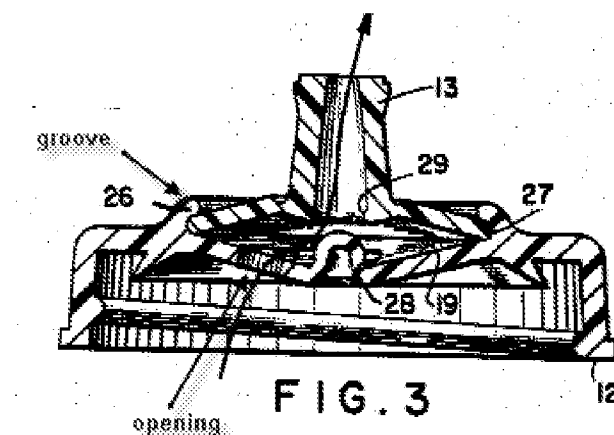
**27. Claims 8, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suffa in view of Esposito as applied to claims 1 and 22 above, respectively, and further in view of Croyle (3,321,114).**

28. Regarding Claim 8, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above. The Suffa and Esposito combination does not expressly disclose the features of claim 8; however, the patent to Croyle – a pop-up diaphragm closure – discloses a membrane (**Croyle**, 18) with several valve openings arranged in a circular line (**Croyle**, 21, Fig. 4). The openings are aligned in a circle. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the flexible membrane on the Suffa and Esposito combination valve assembly to have valve openings arranged in a circular line, as suggested by Croyle, for the contents to be easily dispensable (**Croyle**, Col. 2 Line 70 to Col. 3 Line 2).

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29. Regarding Claim 23, Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 22 above. The Suffa and Esposito combination does not expressly disclose the features of claim 23; however, the patent to Croyle discloses one ventilation opening (**Croyle**, 21) in the connection flange (**Croyle**, 19, Fig. 4). The hole is located on the flange to dispense liquid contents. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the connection flange in the Suffa and Esposito combination valve assembly to have valve openings, as suggested by Croyle, for the contents to be easily dispensable (**Croyle**, Col. 2 Line 70 to Col. 3 Line 2).

30. Regarding Claim 24, Suffa in view of Esposito in view of Croyle discloses all the limitations substantially as claimed, as applied to claim 23 above; further, Croyle teaches the ventilation opening of the connection flange (**Croyle**, 21) is located adjacent to the inner groove wall (**Croyle**, Fig. 3).



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**31. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suffa in view of Esposito as applied to claim 1 above, and further in view of Laauwe (4,747,518).**

Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claim 1 above. The Suffa and Esposito combination does not expressly disclose the features of claim 9; however, the patent to Laauwe – a squeeze bottle with a venting valve – discloses a membrane supporting element (**Laauwe**, 19) with a central valve opening (**Laauwe**, 20, Fig. 5). The supporting element has a recess to house the stopper (**Laauwe**, 24). It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the membrane supporting element in the Suffa and Esposito combination valve assembly to have a central valve opening, as suggested by Laauwe, to allow movement of the cap back and forth between the open and closed positions (**Laauwe**, Col. 3 Lines 49-54).

**32. Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suffa in view of Esposito as applied to claims 1 and 14 above, respectively, and further in view of Baudin et al. (5,924,605) [hereinafter Baudin].**

Suffa in view of Esposito discloses all the limitations substantially as claimed, as applied to claims 1 and 14 above, respectively. Although Esposito teaches the mouthpiece is made of a thermoplastic elastomer (**Esposito**, 16, Col. 2 Lines 13-21), the Suffa and Esposito combination does not expressly disclose that the membrane supporting element or the lid are made of polypropylene [PP]. However, the patent to

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Baudin – a dispensing head for a container – discloses a lid (**Baudin**, 2) and a membrane supporting element (**Baudin**, 28) that are both made of PP (**Baudin**, Fig. 1, Col. 2 Lines 40-42). The lid includes the integral support element, and both are made of PP. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the lid and membrane support element in the Suffa and Esposito combination valve assembly to be made of PP, as suggested by Baudin, for "the two materials [for the membrane and the lid] and the moulding conditions are chosen in such a way that a solid bond is formed by thermal fusion and/or mechanically, between the cap and the elastic element." (**Baudin**, Col. 5 Lines 45-48).

### ***Response to Arguments***

33. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument that the Suffa and Esposito references fail to show certain features of applicant's invention {**Remarks**, Page 12 Lines 13-17}, Esposito does disclose that the flexible membrane (**Esposito**, 15a-b) opens to a resnapped, outwardly open curved configuration when the contents of the container are dispensed (**Esposito**, Fig. 5, Col. 2 Lines 27-33).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/  
Examiner, Art Unit 3781

/Anthony Stashick/  
Supervisory Patent Examiner, Art  
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